
A CRITIQUE ON THE RELEVANT FOREST LAWS AND POLICIES OF INDIA

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ABSTRACT

India's rich flora and fauna is embodied in our vast green forests and the biodiversity of our habitat serves as a haven for wildlife and indigenous communities. Now, however, the increased urbanization and forest degradation has led to distorted ecosystems and recent government legislations lead to more problems than solutions due to their contradictory and ambiguous nature. This paper shall seek to identify the key obstacles to protecting and conserving our forests by analyzing the prominent and major legislations/policies such as the Indian Forest Act 1927, The Forest Policy of 1988, The Forest Conservation Act 1980 via the Godavarman case¹, Joint Forest Management, National Forest Policy 1988, 2016 and an insight on the updated features and provisions of the latest, Draft National Forest Policy of 2018. This paper shall encapsulate the significance of these forest laws and their legal implications.

Keywords: Biodiversity, Ecosystem, Environment, Environment Protection, Forest, Forest Conservation, Joint Forest Management

¹ T.N.Godavarman Thirumalkpad v. Union of India, AIR 1997 SC 1228.

RESEARCH OBJECTIVES

1. Highlight the existing Forest Laws in India and critically analyze the same
2. Discuss the various classifications of forests in India and methods to protect them
3. Conclude on the implementation of the Green Tax, Statutes and other Laws related to Forests and their protection

RESEARCH LAWS, STATUTES

Constitutional Provisions:²

1. Article 51 A (g) – It shall be the fundamental duty of every citizen to protect and improve the natural environment including forest, lakes, rivers and wildlife, and to have compassion for living creatures
2. Article 21 – Right to life as a fundamental right. Enjoyment of life and its attainment including the right to life and human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air, water, sanitation without which life cannot be enjoyed
3. Directive Principles of State policy – Article 48 A: Mandates that the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.
4. Directive Principles of State Policy – Article 246: It gives law making powers upon certain specific subjects to the Parliament and State legislatures of our country. The Parliament has absolute authority to make laws in respect to any matters in List- I and for matters on List -III, both Parliament and the legislature have the authority to make laws. Hence, the concerned authority can make laws for prevention of cruelty to animals, protection of wild animals, birds, prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants.

² Pandey, J.N. - *The Constitutional Law of India*, 851 pages; Publisher: Central Law Agency; 51 edition (2014)

Legislation/Statutes/Policies:

1. Indian Forest Act, 1927
2. National Forest Policy of 1988
3. The Forest (Conservation) Act 1980 and The Forest (Conservation) Rules updated in 2003
4. Draft National Forest Policy 2016
5. Joint Forest Management Guidelines 1990
6. Draft National Forest Policy, 2018

INTRODUCTION

Forests are recognised as important natural resources as they not only benefit us environmentally, they bring about huge revenue in terms of supply of raw materials, fuel and fodder. It was noted that in India, only 19% of the total land area is vegetation cover as opposed to the international standard of about 33-40%. The need to preserve and promote afforestation is dire and blatant. The Indian Forest Act 1927 and State legislation relating to forest impose Governmental control over forests by classifying them into reserved forests, protected forests and village forests.³

After gaining Independence, Indian forests were placed under the State List of the Constitution and thus, the management and preservation of forests came under the purview of the States themselves, The Indian Forest Act went on to further provide States the jurisdiction over both public and private forests which not only facilitates the extraction of timber for profit but also allows governments that have a proprietary interest to divide forests into three sub-categories that include Reserve forests, Village forests and Protected forests.

BACKGROUND

India has a rich culture that treasures the environment and this dates back to the Vedic times

³ Ashutosh Ranjan Srivatsava & Nilakhi Barman, 'Forest Laws in India-Policy and Assesment', The Law Brigade.

wherein plants and flora were worshipped.⁴ Emperor Ashoka has reiterated the importance of the Indian forests in his edicts that read, “Forests must not be burned” and “Trees must be planted on both sides of the path”.⁵ The British era in India marked the end of the tribal protection that was ensured to the natural forests and exploitation of our inherent resources was rampant. The advent of industrialization marked the beginning of an age where trees were recklessly felled to meet export demands and for the smelting, tanning and timber industries. Oak forests were cut and shipped to England for the use of English Royal navy as the “safety of the empire depended on its wooden walls.”⁶

The forest act was then enacted in 1865 but this Act solely provided for the facilitation of forest acquisition and did not address the rights of the indigenous people living in forests or the preservation of forests. After the failure of such a legislation, a new forest act was passed in 1878 which recognized the rights of the tribes living in the forests. The rights of the people over forest lands and produce in the reserved and protected forests were restricted and regulated by this Act and it empowered the Government to exercise control over the forests.⁷

THE INDIAN FOREST ACT, 1927

The Indian Forest Act, 1927 was enacted with an intention to regulate produce and goods from the forests. It explains in detail the process to be followed for asserting an area as a Reserved Forest, Protected Forest or a Village Forest. Moreover, this act also deals with defining offences with regards to the forest and clearly demarcates prohibited acts and actions within Forest areas. It prescribes penalties on the violation of the same. The act of 1927 was based on the previous acts that existed such as the Indian act of 1878 etc. This act is said to have immensely influenced the communities that have been dependent on forest magnificently. The act brought forward increased control of the government thereby regulating anything regarding forests. One of the main objectives of this act was to reduce people’s rights to forests and centralize the whole process. It gave the power to the government to differentiate forests on the basis of classes for the purpose of using them for colonization. Penalties varied within each of these forests. Different activities were prohibited based on the kind of class the forest belonged to. Through this act, the accountability of forest and wildlife was increased, with an

⁴ Reply by Union Minister of Environment and Forests to Rajya Sabha, 24 March, 1998.

⁵ State of India’s Environment: The Citizen’s Fifth Report, Centre for Science and Environment, 1999.

⁶ Mahdhav Gadgil and V.D. Vartak, Sacred Groves in Maharashtra: An Inventory, in S.K. Jain (ed), Glimpses of Indian Ethnobotany, Oxford University Press, Bombay, 1981.

⁷ Supra note 5.

objective of conservation and regulation. The types of forests defined under the act are Reserved forests, protected forests and village forests. Reserved forests are completely under the control of the government and considered to be the most restricted one. It is the property of the government and citizens are not allowed to enter. Local settlers may obtain exceptions based on the discretion of the Forest Officer. Protected forests are such forests in which the Government have proprietary rights. The government has rights over the resources, produce etc., available in these forests and can use them to generate revenue. Village Forests are those forests in which a village or a community has rights over a property granted by the government. As per the act, the degree of protection being given to forests are in the following manner; Reserved forests are the most protected after which comes Protected forests and are followed by Village forests. The government guaranteed that the purpose of the act was meant to ensure the safeguard and preservation of the vegetation front of India. Notwithstanding, a profound examination of the act uncovers that the genuine rationale behind the act was to acquire income from the cutting of the trees and from the timber produce. The act endowed massive authority and capacity to the officials and forest bureaucrats which frequently prompted the badgering of the forest inhabitants. Besides, it prompted denying the migrants and ancestral tribes their deep-rooted freedoms and advantages to utilize the forests and forest produce. The later initiatives such as the Indian Forest Policy, 1952, Forest Conservation act , 1980 etc., ensured to overcome the lacunae and aimed to establish an effective and efficient system.

THE FOREST (CONSERVATION) ACT, 1980

The main aim of the Indian Forest Act of 1927 was to generate revenue however this effectively promoted the widespread exploitation of forest resources by giving was to commercialization and monopoly over land assets.⁸ The increasing destruction meted out to the forests and natural produce called for legal action and hence the Forest (Conservation) Act, 1980 was introduced to curb the exploitation of such natural resources. The key objective of this Act was to control the use of forests for non-forest purposes and limit the de-reservation of forests that have been reserved under the Indian Forest Act, 1927.⁹

Prior to 1980, the rate of diversion of forest lands for non-forestry purposes was about 1.43 lakh hectare per annum. However, with the advent of the Forest (Conservation) Act, 1980, the

⁸ The Forest (Conservation) Act, 1980, No. 69, Act of Parliament, 1980.

⁹ Armin Rosencranz & Sharachchandra Lele, Supreme Court and India's Forest, 43 Issue No. 5 EPW; Available at: <https://www.epw.in/journal/2008/05/commentary/supreme-court-and-indias-forests.html>

rate of diversion of forest lands were controlled to a certain extent.¹⁰ The Act allows the diversion of forest land only for certain purposes such as to meet the developmental needs for drinking water projects, irrigation projects, transmission lines, railway lines, roads, power projects, defense related projects, mining etc. For such diversions of forest lands for non-forestry purposes, compensatory afforestation is stipulated and catchment area treatment plan, wildlife habitat improvement plan, rehabilitation plan etc. are implemented, to mitigate the ill effects of diversion of such vast area of green forests.¹¹

As was seen in the case of *T.N. Godavarman Thirumalkpad v. Union of India*¹² where the petitioner had initiated a writ application against the State of Kerala with regards to the safeguarding and protecting of forest land in the Nilgiri region as it was being ruefully exploited at the time, the Supreme Court played the acted as a catalyst and introduced the concept of ‘polluter pays’ and sustainable development via the Forest (Conservation) Act.

This was a landmark case because it included judicial intervention in the proceedings. For the first time, the Apex Court addressed important issues such as the illegal mining occurring in the Kudremukh region and the Aravalli hills. The Court ruled that a separate fund, the Compensatory Afforestation Fund, or CAMPA, must be introduced so as to facilitate better protection of the forests.

While pronouncing the judgment the Court looked into Section 2 of the Forest Conservation Act 1980 in order to define the term ‘Forest’ which was also aligned to the definition of ‘forest activities’ in the judgment itself. Concerning the new interpretation of Section 2 of the Forest Conservation Act and forest land, it can not de-reserve safeguarded forest for commercial activities without consent. This means all forest ventures require the permission of the Central Government.¹³ The case thereby highlights both the merits and demerits of the existing legal regime with regards to the environment and the steps we must take in order to reduce future loopholes in the law.

Forest productivity and enhancement are the key objectives of the Forest (Conservation) Act, 1980 as it facilitates conservation of biological diversity and safeguards the natural

¹⁰ Rangarajan M., *Fencing the Forests*, 1st edn., Oxford University Press (1996) New Delhi, p. 29.

¹¹ M F Ahmed, “*In-Depth Country Study-India*”, Asia-Pacific Forestry Sector Outlook Study Working Paper Series, Working Paper No: APFSOS/WP/26, October 1997,

¹² *T.N. Godavarman Thirumalkpad v. Union of India*, AIR 1997 SC 1228.

¹³ Jeffy Johnson, ‘*T.N. Godavarman v. Union of India– a case study*’, iPleaders Blog.

environment around us. The Act was a guide to the Courts in the Godarvarman case and it serves as a much-needed precedent. The Act also brought about awareness regarding the dire situation of our forests and how, as a society, we may try and conserve our resources. It thereby enables smooth operation of laws in carrying our environmental activities.

NATIONAL FOREST POLICY 1988

The National Forest Policy of 1988¹⁴ was passed with fundamental aim of protecting environmental stability and ecological balance in order to ensure the prosperous sustenance of all life forms including flora and fauna. Subsequent to that, was the aim of direct economic benefit derivation. The primary objectives of the policy include:

- Ensuring the preservation and restoration of ecological balance, thereby perpetuating environmental stability.
- Increasing a forestation and social forestry, thereby significantly increasing forest and tree cover in the nation.
- Ensuring the conservation of existing natural heritage by preserving natural heritage and flora and fauna.
- Promoting the optimum utilization of forest produce and efficient use of timber.
- Monitoring denudation and soil erosion specifically in areas of reservoirs, lakes and rivers.
- Producing required amount of wood, fodder, fuel, minor forest produces, timber to meet the requirements of rural and tribal population.
- Monitoring the extensions of sand dunes in desert areas and coastal tracts.
- Promoting employment for women, and generation of such opportunities.
- Increasing the optimum productivity with respect to national needs and encouraging efficient use of forests.

The Policy was passed with environmental sustainability and livelihood of people as its priority and it helped achieved a major portion of the goals set. According to the *National Forest Commission Report of 2005*,¹⁵ the forest cover in the country had seen increase from

¹⁴ National Forest Policy 1988, Ministry of Environment, Forest and Climate Change, Government of India, No.3-1/ 86 FP

¹⁵ Forest Survey of India, National Forestry Commission Report 2005-06

19.7% in 1987 to 23.4% in 2005. It even largely contributed towards sustenance of ecological balance and environmental stability in the nation. However, since the policy had been passed decades ago, it could not keep up with dynamic situation of forests and the substantially changed climate conditions in India. This arose the need for its revision. Furthermore, the policy was also criticized for ambiguity on certain specific plans which were reported to be missing, delayed or sometimes left open-ended subject to interpretation. One such instance was the policy lacking a clear definition of the term 'forest'- states have the liberty to arrive at their own definition of the term.¹⁶ The policy does not address the inviolate forests in the nation. The government asks these forests to be untouched and left alone. Furthermore, when it comes to forest management, the inclusion of private sector is attempted to be implemented. This raises major concerns about the negative impact it could have on the members of the tribal communities and the forest dwellers, who depend on the forests for their livelihood. General public has raised objections with respect to the government's decisions of granting speedy clearances to projects which require forest land diversions, while the issues regarding the rights of tribal people are not addressed with the same importance. The policy also needs to take into consideration the factors affecting climate change, increasing pollution and the rights of forest dwellers and draft plans accordingly.

DRAFT NATIONAL FOREST POLICY 2016

The Draft National Policy of 2016¹⁷ was made public to replace the policy of 1988. The new policy fundamentally addresses the factors and consequences of climate change, and draws focus towards plantations and tress which are grown outside forest lands and the wood industry. The new policy recognized the priorities of the Policy of 1988 of environmental stability and ecological balance, while incorporating ideas of participatory forest management, farm forestry and rights based legal framework for empowering local communities.¹⁸ The new policy aims to factor in problems such as declining quality of forests, consequences of climate change, accelerating water crisis, inflating human and wildlife conflicts, ascending air pollution and involvement of multi-stakeholders in decision making. The Draft Policy, framed by the *Indian Institute of Forest Management, Bhopal*¹⁹, retained

¹⁶ Joshi, A.K., Pant, P., Kumar, P., Giriraj, A, *National forest policy in India: critique of targets and implementation. Small-Scale Forestry*, 2011, 10(1), pp.83-96.

¹⁷ Draft National Forest Policy, 2016, Centre for Policy Studies, Indian Institute of Forest Management, Ministry of Environment, Forest and Climate Change

¹⁸ Saxena, N.C., *The saga of participatory forest management in India*. CIFOR, 1997

¹⁹ Centre for Policy Studies, Indian Institute of Forest Management, Bhopal, Madhya Pradesh

the national goal of having a minimum of one-third of the geographical area in the nation under tree or forest covers. However, the policies for hills and mountainous regions to amount to two-thirds of forest area were scrapped away. A significant attribute of the new policy is its idea to set up a parallel arrangement to the Forest Rights Act, by promoting Community Forest Management where the government, the private land and the entire community is brought to work together. According to this, the Forest Departments would be obliged to take into consideration the plans prepared by the members of *gram sabhas* for their forest lands, thereby introducing wider management plans.

The new policy integrates the vision of sustainable forest management and participatory forest management to build a “*rich cultural heritage of coexistence and egocentrism.*” The policy introduces an ecosystem approach in forest management which includes government and community owned, common and private lands. It also pushes for large scale restoration of degraded forests and exercises strict restraint on diversion for non-forestry purposes such as quarrying, mining, linear infrastructure, construction of dams and roads, etc. in order to safeguard forest lands. It includes biodiversity conservation and enrichment of ecosystem services as its prime objectives. The Policy brings about the establishment of National Board of Forestry and State Boards of Forestry for monitoring the spread of forest areas in the nation.

The new policy purports the levy of green tax on citizens in order to inculcate ecologically responsible behaviours among them and also generate additional financial resources to enhance forestry budget. It promotes introducing environmental cess, carbon tax, green tax on certain goods and services to represent citizens’ contribution. The policy asserts to develop *sound ecotourism models* by imposing responsibility on protecting wildlife and its habitat and also maximizing the income of local communities. Management plans are to be developed for city forest, gardens, woodlands and parks to nurture and help grow clean urban air, health and parallel benefits.

The Policy of 2016 is criticized on the grounds that it undermines the *Forest Rights Act, 2006*, which fundamentally focuses on empowering local gram panchayats in tribal areas close to the forests. The implementation of the parallel forest management mechanism is speculated to reinstate the forest department as the final authority over using forest resources, instead of forest dwellers and the local community is dependent on them. This contradicts with the newly emerging *community forest governance regime* under the *Forest Rights Act*.

JOINT FOREST MANAGEMENT

Joint Forest Management [JFM] as a forestry approach was inducted in the context of the National Forest Policy of 1988, where the State forest departments were asked to work alongside the local tribal communities and forest dwellers where by sharing the costs and benefits accrued from the management of the forests, the communities' interests and economic interests were mutually protected. This approach sought to develop healthy relationships between the government forest departments and the fringe forest groups, which was founded on mutual trust and equally distributed roles in the conservation, preservation, protection and growth of forests lands under their jurisdictions.²⁰

In JFM agreements, the local communities and villagers assist the State forest departments in the protection of forest lands from excessive grazing, fire, illegal harvesting, etc. and in return, they receive non-timber forest products, a share of the revenue made from the sale of forest products, etc.²¹ The JFM approach harnesses the strengths of rural communities and directs towards the protection of forest lands, and then helps to meet the needs and livelihood of these communities while also generating environmental services.

The rules and regulations with respect to JFM agreements were initially specified in the National Forest Policy, 1988. Section 4(6) of the Policy introduces the concept of a “symbiotic relationship” and provides guidelines about the management of forests to the holders of Rights and Concessions under Sections 4(2) and 4(3). The JFM approach was originally implemented in India in the 1980s in West Bengal, followed by Haryana.

The *Joint Forest Management Guidelines of 1990*²² passed by the Ministry of Environment, Forest and Climate Change, Government of India, initiated the foundation for implementing JFM in degraded forest lands. The *Guidelines for Strengthening Joint Forest Management Programme, 2000*,²³ proposed the legal backup for JFM and encouraged the participation of

²⁰ *Joint Forest Management: A Handbook*, Capacity Management for Forest Management and Training of Personnel ID-P199, Japan International Co-operation Agency, Ministry of Environment, Forest and Climate Change

<http://ifs.nic.in/Dynamic/pdf/JFM%20handbook.pdf>

²¹ Bhattacharya, P., Pradhan, L. and Yadav, G., *Joint forest management in India: experiences of two decades*. Resources, Conservation and Recycling, 2010, 54(8), pp.469-480.

²² The Joint Forest Management Guidelines of 1990, the Ministry of Environment, Forest and Climate Change, Government of India

²³ Guidelines for Strengthening Joint Forest Management Programme, 2000, the Ministry of Environment, Forest and Climate Change, Government of India

women in the process by creating threshold categories. It expanded the implementation of JFM from degraded forests to “good forest lands”. It introduced the development of Micro Plans and Work Plans and mechanisms for conflict resolution between State and local communities. It recognized the contribution of the regeneration of resources and set guidelines for monitoring and evaluation processes. The third set of Guidelines were passed in 2002, which were based on a suggestive relationship between Panchayats and pushed the identification of the JFM Committees as “guardian of forests” characterized by separate non-political identities.

DRAFT NATIONAL FOREST POLICY, 2018

Under the British rule, The Indian Forest Act of 1865 was passed. This Act was the main reason for the enactment of the Forest Act, 1878 and was also primarily the reason for the declaration of any planted land as a forest, and the management of which came directly under the British. In furtherance, The Indian Forest Act of 1927 was enacted. The Act of 1927 was significant as it recognised the different categorizations of forests and also mentioned the activities constituting a forest offence and imposed penalties on violations of the provisions of the Act.

After the UN Conference in Stockholm, 1972, it led to a rude environmental awakening, and then the drawbacks of the Act of 1927 became more visible. The categorization of forests was merely based on the basis of the revenue generated and not in any way concerned environmental protection. To step up the framework and performance in environmental protection, a new Act was reinforced in 1956 and consequently the National Forest Policy was brought into effect in 1988. This Act was prominent and had demarcated boundaries and said that India’s forest cover should not be less than 33% in order to maintain and ensure environmental sustainability and preservation of ecological balance. Much credit for its intentions, it however came with major shortcomings and subsequently many other policies occurred to be implemented.

At present, India’s forest cover is 24.39%. In order to protect and boost the same to 33%, a more refined, well-rounded and an improved draft on Forest Policy was surfaced by the Ministry of Environment in 2017 keeping it open for public comments. It is known as the Draft National Forest Policy, 2018. The major highlights of this draft in brief are:

- It facilitates for levying green taxes for ecologically responsible behaviour and supplements financial resources dipped in forestry issues

- It proposes a joint forest management-like mechanism to enhance agro-forestry
- It also proposes to launch a Community Forest Management Mission
- Special caution and measures are prescribed to be adopted in forest-land diversion projects and other linear infrastructure
- In order to ensure supervision and management over the spread area of forest cover, it proposes the establishment of National and State Boards of Forestry
- It directs attention towards “sound ecotourism model”
- The policy provides CAMPA funds for those people relocated from wildlife corridors
- One of the major focuses of this policy is on Climate Change
- It also provides steps to sustain urban health, clean air and so on, through city/forest/park/woodland management plans
- It also lays down strong objectives and measures to tackle human-animal conflict

Critical Review

Climate change, declining green cover and human-animal conflicts – these are some of the contemporary issues which the draft strategy looks to address. The prominent or outstanding part of the draft is its accentuation on global or international test on environmental change. The draft targets to bringing the 33% of the demography of India under the forests cover through logical mediations (scientific research and study) and also through implementation of severe standards or procedures to ensure these covers²⁴. Severe limitation on redirection for non-ranger service purposes (anti-forestry actions), and stringent oversight on compliance of these conditions, are the practises enunciated and accommodated by the draft for protecting the forest lands. The Draft additionally proposes for the taking up of public-private interest models for undertaking afforestation and reforestation exercises. Be that as it may, the strategy draws an eye of pundits as there is a critique that privatisation of the natural resources, private

²⁴ Ashutosh Ranjan Srivastava & Nilakhi Barman, *Forest Laws In India – Policy And Assessment*, Law Brigade (Published on 26th June, 2019)

intervention and conversion of these forests into private timberlands will result in national concern over a period of time²⁵. Likewise, the draft also centers more around the protection and safeguarding of forests rather than recovering them through open support and investment.

This draft National Forest Policy of 2018 is believed to have the capacity to counter the shortcomings of its predecessors in forest development and protection.

Main features of the policy (Analysed and compiled from the articles on the draft policy by Livemint and the WIRE)²⁶

- The policy proposes to restrict schemes and projects which interfere with forests that cover steep slopes, catchments of rivers, lakes, and reservoirs, geologically unstable terrain and such other ecologically sensitive areas
- The draft policy suggests that the ecologically sensitive catchment areas shall be stabilized with suitable soil and water conservation measures, and also by planting suitable trees and grass-like bamboo
- It also suggests setting up of two national-level bodies—National Community Forest Management Mission (CFM) and National Board of Forestry (NBF)—for better management of the country's forests
- The draft mentions that NBF needs to be headed by the central minister in charge of forests
- The draft policy calls for state boards of forestry headed by state ministers in charge of forests to be established for ensuring inter-sectoral convergence, simplification of procedures, conflict resolution, among other things
- Public-Private Participation: The Draft policy stated that Public-private participation models will be developed for undertaking afforestation and reforestation activities in degraded forest areas and forest areas available with forest development corporations and outside forests

²⁵ S. Gopikrishna Warriar, *India's new forest policy draft draws criticism for emphasis on industrial timber*, Mongabay (Published on 12th April 2018)

²⁶ Sushant Agarwal, *National Forest Policy Draft 2018*, WIRE (Published on 2nd April, 2018) <https://thewire.in/environment/national-forest-policy-draft-2018-takes-one-step-forward-two-steps-back> & Mayank Aggarwal, *Government unveils draft national forest policy*, Livemint (Published on 17th March, 2018) <https://www.livemint.com/Politics/YKRe5VogEJnpFzUdFKU0QJ/Government-unveils-draft-national-forest-policy.html>

- Harmonization of policies and Laws: The new draft also says efforts will be made to achieve harmonization between policies and laws like the Forest Rights Act (FRA) 2006
- As far as community forest resources management under Forest Rights Act is concerned, the new policy will address the same under participatory forest management and the same will be addressed through the proposed community forest management mission
- It also suggested for the strengthening of the participatory forest management approach for which a National Community Forest Management (CFM) Mission will be launched
- On the issue of finances required for management of forests, the draft states that the compensatory afforestation fund which is being transferred to the states would be a major source of funds for taking up afforestation and rehabilitation works in degraded forest areas as well as for bringing new areas under forest and tree cover
- The objective of the proposed policy is to safeguard the ecological and livelihood security of people, of present and future generations, based on sustainable management of the forests for the flow of ecosystem services
- The Policy continues with the target of having 33% of India's geographical area under forest and tree cover and in the hills and mountainous regions, the aim will be to maintain two-thirds of the area under forest and tree cover
- The policy also calls for "promotion of trees outside forests and urban greens", while stating that it will be taken up in "mission mode"
- With respect to forest fires, it states that adequate measures would be taken to safeguard ecosystems from forest fires, map the vulnerable areas and develop and strengthen early warning systems and methods to control fire, based on remote sensing technology and community participation
- It emphasizes on integrating climate change concerns into forest management while noting that forests act as a natural sink of carbon dioxide thereby assisting in climate change mitigation
- The policy also stresses that wildlife-rich areas and corridors outside protected areas would be identified and maintained for ensuring ecological and genetic continuity
- Human-Wildlife Conflict: It outlines short-term and long-term actions – It mentions that quick response, dedicated teams of well-equipped and trained personnel, mobility, strong interface with health and veterinary services, rescue centres, objective and

speedy assessment of damage and quick payment of relief to the victims would be at the core of the short-term action & monitoring and management of the population of wildlife would be adopted on a long-term basis within and outside forests for maintaining the balance²⁷.

Limitations of the Policy

As pointed out earlier, critics say that privatisation of the natural resources, private intervention and conversion of these forests into private timberlands will result in national concern over a period of time. The further grounds of criticism of the draft policy are²⁸,

- This draft is criticised on various grounds by the tribal rights activists. As per the critics, public private partnership models for afforestation and agro-forestry detailed in the policy will open up the areas over which tribals and forest dwellers have legal rights under Forest Rights Act. However, the draft policy allows such activity under the Public-Private Participation (PPP) model. It thus dilutes FRA which lays down those traditional lands of the Adivasis and other forest dwellers cannot be used for any purpose without their consent.
- Critics further argue that the policy dilutes the Fifth and Sixth Schedules of the Constitution and Panchayat Raj (Extension) Act in Scheduled Areas which are meant to safeguard the interests of the tribal people.
- Further, the draft has also drawn criticism for launching a parallel forest managing committee – National Community Forest Management. Critics are of the opinion that the parallel management goes against the spirit of Forest Rights Act.
- The draft allows planting of “commercially important species like poplar and eucalyptus” which are water-demanding species with deep root systems. Critics are of the opinion that plantation of such species to meet afforestation targets and timber requirements will damage groundwater recharge.
- According to social activists, the draft policy fails to discuss gender integration and women’s issues in the management of forests, trees, agro-forestry and afforestation.
- Alike NFP 1988, the new draft policy also lacks a legal definition of the term forest

²⁷ Draft National Forest Policy, 2018, Pg 5

<http://www.indiaenvironmentportal.org.in/files/file/Draft%20National%20Forest%20Policy,%202018.pdf>

²⁸ <https://blog.forumias.com/draft-national-forest-policy-2018/>

- The draft forest policy has also been criticized as it does not address the issue of forest fragmentation.

Recommendations

A clear-cut definition of forests and implementation of laws and by-laws for protection and prevention of offences in planted areas, the onset of silent forests mentioned in the policy must prior be done with the consultation of expert ecologists and conservationists and where ecosystems are at a loss there must be prevention of excessive plantation, river diversions and other activities.

CASE LAW

M.C. Mehta vs Kamal Nath & Ors

In environmental law *M.C. Mehta v. Kamal Nath*, is considered to be an important landmark case. It was in this case that the public trust doctrine was applied in India. In this case Span Motels Private Limited , constructed a club by encroaching forest land in 1994. This encroached forest land was later authenticated and regularized due to the connection of the company with the Indian politician Kamal Nath who was the Minister of Environment and Forests during that time. The result of this encroachment was the Beas River redirecting its path and affecting localities and areas surrounding it. The management of the club tried its best to redirect the course of the river but failed to do so. The change in its course aided by external construction done by the club, eventually resulted in floods and landslides and during this flood, property worth Rs. 105 crore was said to be destroyed. The club argued in court that the external construction that was done by the motel was bona fide with the intention of protecting the land from floods. The court in its judgement stated that instability that is caused due to the river should be reason why the permission should not have been granted. Moreover, encroachment of forest land, is against the provisions of Forest acts and thereby the eventual permissions obtained should not have been utilized for commercial gains. The region being geographically and ecologically delicate and loaded with grand magnificence ought not to have been allowed to be changed over into private proprietorship and for business gains. The court referred to the Public Trust Doctrine which states that the public has certain rights and are deserving of expecting certain lands and areas. It was established on the thoughts that specific lands such as waterways, beach, backwoods and the air are under the Trusteeship of the

Government and were held by Government for the free and unobstructed utilization of the overall population. In its judgment, citing the Public Doctrine, the court viewed this in the same light and moved for the repudiation of the grant. The court also moved forward to cancel the lease agreement that was executed in favour of the club and granted authority to the Himachal Pradesh Government to restore the area to its original conditions. The Motel was also ordered to compensate for the environmental and ecological damage done to the area. The contamination brought about by different constitutions made by the Motel in the riverbed and the banks on the waterway Beas was also ordered to be eliminated and turned around

CONCLUSION

Having various legislations in place for the protection and betterment of the environment is a necessity in the wake of increasing urbanization and industrialization. Apart from the legislative measures in place, it is important to appreciate the role played by the judiciary in the arena of environmental protection. The judiciary's proactive role in setting and recognising foundational principles may be seen through the series of cases such as the *Union Carbide Corporation v. Union Of India*²⁹ where the judiciary created the principle of absolute liability, the polluter pays principle and the precautionary principle that was recognised in the *Vellore Citizen's Welfare Forum v. Union of India*³⁰. Adding to the feathers in the judiciary's cap is the recognition of the principle of public trust being an essential feature of the law of the land in *M.C.Mehta v. Kamal Nath and Others*³¹. *The Rural Litigation and Entitlement Kendra v. the State of UP*³² and the *Vellore Citizen's Welfare Forum v. Union of India*³³ led to the development of the principle of sustainable development where the Court observed that that sustainable development has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting eco- system.

Articles 48A and Article 51A of the Indian Constitution make it a duty of the citizens and the state to protect the environment. However, these provisions are not justiciable. Therefore, over the course of time, the judiciary has reinstated the importance of environmental protection by

²⁹ *Union Carbide Corporation v. Union Of India* AIR 1990 SC 273

³⁰ *Vellore Citizen's Welfare Forum v. Union of India* AIR 1996 SCC 212.

³¹ *M.C.Mehta v. Kamal Nath and Others* 1997 1 SCC 388.

³² *Rural Litigation and Entitlement Kendra v. State of UP*

³³ *Supra* 20

attributing to them the status and enforceability of fundamental rights. Judicial activism has come a long way in extending the scope of fundamental rights such as Article 21 to include the right to a clean and wholesome environment³⁴, right to water³⁵. These rights have been interpreted in a way to include a wide range of aspects that relate to the environment and Public Interest Litigation(PILs) have also help in furthering the preservation of the environment. Undoubtedly, the role of judiciary in India has been tireless and highly constructive towards the protection of the environment.

By giving case laws such as Godavarman ³⁶that not only defined what a forest s but also emphasised the need for a comprehensive legislation, the judiciary has played the role of activist in the protection and conservation of the forest. The court has breached the gap between the lacunas in the implementation of the laws and various laws themselves. Further, from the analysis of various case laws cited above, it can be stated that the judiciary has tried to balance the economic development and protection of the environment. The judiciary has also enacted various laws by giving pronouncements in relation to the question of the protection of the forest.

³⁴ Charan Lal Sahu Vs. Union of India & Ors [1989] INSC 395

³⁵ Narmada Bachao Andolan Vs. Union of India & Ors [2000] INSC 518

³⁶ T.N. Godavarman Thirumulpad vs Union Of India & Ors [WP (Civil) No. 202 of 1995]